

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Respondent,

v.

RAUL ZAVALA,

Petitioner.

NO. CR-05-0105-LRS

ORDER RE: CERTIFICATION
OF APPEAL AND IFP STATUS

On February 5, 2010, Petitioner-Defendant Mr. Zavala filed a Motion and Affidavit for Leave to Proceed In Forma Pauperis (Ct. Rec. 226) to appeal the district court's order entered on December 7, 2009, which includes a denial of his habeas petition under 28 U.S.C. § 2255 (Ct. Rec. 225). Mr. Zavala also filed a Motion for a Certificate of Appealability (Ct. Rec. 227). This court will issue a certificate of appealability when a Petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The court has reviewed the file and is fully informed. For the reasons set forth below and in the court's earlier order herein, the request for issuance of a Certificate of Appealability is **DENIED**.

DISCUSSION

Petitioner filed a petition for habeas corpus alleging his sentence is unconstitutional based on eighty-two (82) grounds. On

1 June 25, 2009, the district court entered judgment in favor of Plaintiff-
2 Respondent, denying Petitioner's habeas corpus petition (Ct. Rec. 225).

3 Final orders issued by a federal district court in habeas corpus
4 proceedings are reviewable by the circuit court of appeals. 28 U.S.C. §
5 2253(a). In order to have final orders reviewed, Petitioner must obtain
6 a certificate of appealability. 28 U.S.C. § 2253(c). This court will
7 issue a certificate of appealability when a Petitioner makes a
8 substantial showing of the denial of a constitutional right. 28 U.S.C.
9 § 2253(c)(2). To make a substantial showing, the Petitioner must
10 establish that "reasonable jurists could debate whether (or, for that
11 matter, agree that) the petition should have been resolved in a
12 different manner or that the issues presented were 'adequate to deserve
13 encouragement to proceed further'." Slack v. McDaniel, 120 S.Ct. 1595,
14 1603-04 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

15 Here, Petitioner's appeal fails to make a substantial showing of
16 the denial of a constitutional right. It is not apparent that
17 reasonable jurists would differ on whether the motion should have been
18 resolved in a different manner. Accordingly,

19 Based on the forgoing, **IT IS HEREBY ORDERED:**

20 1. Defendant-Petitioner's Motion and Affidavit For Leave to
21 Proceed in Forma Pauperis Pursuant to Title 28 U.S.C. 1915," **Ct. Rec.**
22 **226**, filed on February 5, 2010, is **DENIED as MOOT**.

23 2. Defendant-Petitioner's Motion for Certification of
24 Appealability, **Ct. Rec. 227**, is **DENIED**.

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s/Lonny R. Suko

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